

BEFORE THE LABOUR COURT AT CHANDRAPUR

Ref IDA No. 01/2024

Exh.O/07

Divisional Controller,
Maharashtra State Road Transport
Corporation,
Durgapur Road, Tukum Chandrapur,
Tq: & Dist: Chandrapur

First Party.

VERSUS

01. Smt. Kunda Subhasg Newalkar
02. Smt Dipika Raju Aduskar
03. Shri. Rahul Subhash Nevalkar
04. Smt. Lalita Subhash Nevalkar

Second Party.

All R/o. Pathanpura, Joddeul Chowk,
Chandrapur, Tq: & Dist: Chandrapur.

Appearance: The Ld. Advocate Shri. U.V.Deshpande for First Party

The Ld. Representative Shri. Shikare for the Second Party

Claim: Reference under section 12 sub section 5 of the Industrial Dispute Act, 1947.

ORDER ON PRELIMINARY ISSUES

(Passed on this 15th Day of Sep. 2025)

This is a reference made by the State of Maharashtra through Upper Labour Commissioner, Nagpur in terms of the provisions of section 12 sub-section 5 of the Industrial Dispute Act, 1947 (in short, I.D.Act), particularly framing questions nos. 1 to 3 which are as follows.

01. Who is the appointing authority of Party No. 2 ?
02. Whether termination of service of Party No.1 done by and on behalf of Party No.1 legal, valid and justified?
03. In case where termination of service is not legal and proper, whether or not it is necessary to reinstate Party No.2 along with back wages and other consequential benefit?

02] After receipt of reference by this Court, notices were issued to both the parties i.e. Party No. 1 and Party No.2, upon receipt of the notices by the parties, Party No. 1 have appeared through the Representative and filed statement of claim on record at Exhibit U-2 and the Party No.1 has filed written statement on statement of claim filed by the Party No.1. at Exhibit C-2.

STATEMENT OF CLAIM OF PARTY NO.2 IN BRIEF AS FOLLOWS.

03] Party No. 2 includes 01. Smt. Kunda Subhash Newalkar, 02. Smt Dipika Raju Aduskar, 03. Shri. Rahul Subhash Nevalkar and 04. Smt. Lalita Subhash Nevalkar. They are legal heirs of the deceased employee Subhash Wamanrao Newalkar who was working with Party No. 1 as security guard from 10.05.1982 to till his illegal and unlawful dismissal by Party No.1 on 12.12.2012. The Party No. 2 (1) Smt. Kunda is wife of the deceased employee, the party no. 2 (2) is the married daughter of the deceased and party no. 2 (3) and 2 (4) are sons of the deceased.

04] The Party No.1 is the representative of MSRTC Chandrapur Division and also appointing authority of the deceased employee Subhash Wamanrao Newalkar. The Party No.1 is also the authority to grant death benefit of the deceased employee to party no.2 being legal heirs of the deceased. The deceased employee was illegally and unlawful terminated by Party No.1 without following principle of natural justice. The Party No.2 being legal heirs of the deceased employee were suffering from starvation, and therefore, they

approach before Conciliation Officer, Chandrapur, and tried to settle the matter but in vain. As such, the present reference has been forwarded to this Court by Addl. Labour Commissioner, Chandrapur by formulating certain questions as above.

05] It is the submissions of legal heirs of the deceased employee that the deceased was charge sheeted by Party No.1 by issuing charge sheet dated 25.10.2011, whereby he was charged with the alleged misconduct falling in item nos. 10,35,44A and 22 of Schedule 'A' of Discipline and Appeal Procedure (in short D.A.Procedure) of MSRTC. It is alleged that the deceased was asked on 04.09.2010 to examine himself medically before the Ld. Civil Surgeon, Chandrapur. However, instead of various reminders issued to the deceased by letters dated 08.12.2010,23.02.2011, 22.03.2011,15.04.2011 and 19.05.2011, the deceased had not submitted medical report of the Ld. Civil Surgeon, Chandrapur to Party No.1 and remain absent on duties. The deceased was not allowed for further duties by Party No.1 from 04.09.2010 on the count that he should submit a medical examination report from the Ld. Civil Surgeon, Chandrapur.

06] It is further submitted by Party No.2 that, thereafter ex-parte enquiry was conducted by Party No. 1 on 30.10.2012, and show caused notice was issued to the deceased on 26.11.2012. The deceased replied to show caused notice on 10.12.2012, informing that he was suffering from illness and he has already submitted medical report of Civil Surgeon at Security Section where he was working, and he also requested to not to dismiss him from the employment. However, Party No.1 without considering reply of the deceased as well as without making inquiry about submission of medical report by the deceased, issued dismissal order of the deceased on 12.12.2012.

07] It is alleged by Party No.2 that charges made against the deceased are baseless and without material on record and the deceased has been

victimized. The enquiry conducted against the deceased was not fair and proper. The Enquiry Officer and Disciplinary Authority is the same person working on the post of Divisional Statistician of Party No.1. The Divisional Statistician cannot act as Competent Authority for the workers working on the post of security guard as D&A Procedure of MSRTC. The Divisional Statistician can act as a Competent Authority in case of employees who are working under him in Divisional Statistician section only. The deceased was working as security guard; therefore, Divisional Statistician is not a competent person to conduct inquiry.

08] It has been further alleged by Party No.2 that Enquiry Officer has acted as prosecutor by asking direct questions to the Reporter Mr. V.V.Mahure, Security and Vigilance Officer in the ex-parte enquiry dated 30.10.2012. The Enquiry Officer has failed to record examination-in-chief of the Reporter. The Enquiry officer also failed to give chance for submitting defence statement to the deceased and close the inquiry with bias mind. The findings recorded by Enquiry Officer are perverse and drawn without any material on record.

09] It is further submitted by Party No.2 that the punishment of dismissal is shockingly disproportionate and no such punishment has been provided in the D & A Procedure in respect of the charges levelled against the deceased. No inquiry was conducted about submission of medical report by the deceased to Security Section. The Charges are shown proved by applying colourable exercise of power and thereby the deceased has been victimized. It is alleged that the Party No.1 has committed unfair labour practice against the deceased. Thus, Party No.2 has prayed for setting aside termination order of the deceased employee and for grant of death benefit as well as grant of back wages.

THE CASE OF PARTY NO.1 IN SHORT.

10] The statement of claim and all the facts stated therein and allegations made are categorically denied by Party No.1 and submitted that the application framed and filed by Party No.2 is not tenable in the eyes of law on facts. That the deceased Subhash Newalkar was appointed as security guard by Party No.1. It is alleged that the deceased wilfully remains absent on duty without any prior intimation. The Party no.1 had conducted fair enquiry against the deceased and found charges are proved in departmental proceedings. Thereafter, Party No. issued show caused notice of dismissal and thereby decided to dismiss the deceased from service.

11] Further contended by Party No.1 that, the principle of natural justice has been followed and the Enquiry Officer has appreciated that the deceased had committed serious misconduct and negligence in discharging his duties and thereby caused monetary loss to the Party No.1. The order of dismissal of the deceased from service is legal and proper. Findings drawn by the Enquiry Officer are legal and proper and absolutely based on the material available on record in the departmental proceeding. No perversity or illegality has been committed as alleged. Under these circumstances, the Party No.1 has prayed for dismissal of the reference.

12] On considering rival pleading of the parties, my the then Ld. Predecessor has framed issues at Exh. O-06, out of which, initial two issues are regarding just and fairness of enquiry and about the perversity of findings. The said two issues are reproduced here under as it is which are ordered to be decided at first being preliminary issues. After considering the material on record, I have recorded my findings against those issues for the reasons discussed hereinafter.

Sr No.	ISSUES	FIDNDINGS
01.	Does party no. 2 prove that the enquiry was	In the affirmative.

	conducted against the deceased Subhash Newalkar is in violation of principle of natural justice and is vitiated?	
02.	Does party no.2 prove that the findings recorded by inquiry officer are perverse?	In the affirmative.

:REASONS:

AS TO ISSUES NOS. 1 AND 2

13] Both issues are interlinked with each other, therefore, those have been taken up for consideration together to avoid repetition of evidence and discussion. It is settled position of law that while deciding the question of justness and fairness of inquiry and legality and validity of finding recorded by Enquiry Officer, the Court has to consider Enquiry proceeding. The Court cannot travel beyond enquiry proceeding to record finding on the said issues. Taking in to consideration this settled principle, it would be just and proper to consider record of Enquiry proceeding available on record.

14] The Party no.2 has produced on record certain documents along with list exhibit U-3 i.e. Copy of charge sheet dated 25.10.2011, copy of report submitted by Reporting Officer dated 30.05.2011, copy of letter issued Party No.1 to Ld. Civil Surgeon dated 08.12.2010, copy of show cause notice dated 26.11.2012 issued by Party No. 1 to the deceased, copy of findings recorded by Enquiry officer dated 26.11.2012, copy of reply filed by the deceased dated 10.12.2012 to show cause notice, copy of dismissal order dated 12.12.2012 issued by Party No.1 to the deceased, copy of letter of Party No.1 dated 10.07.2023, copy of death certificate of the deceased dated 30.05.2022. The Party No.1 has also produced on record carbon copy of findings recorded in Enquiry proceeding along with pursis at exhibit C-3.

15] The first and foremost submission of the Party No.2 is that the enquiry proceeding is conducted ex-parte and no opportunity of hearing was given to the deceased. The perusal of charge sheet submitted against the deceased delinquent goes to show that the allegation is made against the deceased that though he was asked to undergo medical examination and to submit medical report to that effect of the Civil Surgeon, he failed to undergo medical examination or to submit medical report despite repeated requests made by Party No.1. Further allegations are made against the deceased, that he continuously remains absent from duty. On these set of allegations, charges under clause 10,35,44A and 33 of D & A Procedure were levelled against the deceased delinquent.

16] Further, report submitted by Reporting Officer dated 31.05.2011, goes to show that it was submitted by the Security Inspector, MSRTC, Chandrapur to Divisional Controller. In the said report, it was communicated by the Reporting Officer that the deceased was absent on duty for the period of 9 months from 04.09.2010, and he had also failed to undergo medical examination despite directions given to him. The copy of letter of Divisional Controller dated 06.12.2010, goes to show that it was issued to District Medical Officer, Rural Hospital Chandrapur informing the facts of mental illness of the deceased, and it was requested to perform medical examination and to submit report about the fitness of the deceased to work on the post of security guard.

17] On perusal of enquiry proceeding, it is noticed that the enquiry is conducted ex-parte against the delinquent. It is worth to mention here that conducting departmental proceeding ex-parte is not itself illegal or invalid. However, it needs to be brought on record that reasonable notice of hearing of the proceeding was given to the delinquent. The observation recorded by Enquiry Officer in proceeding dated 30.10.2012, goes to show that the delinquent was present on 22.10.2012, and as per adjournment application filed

by him the departmental proceeding was listed on 29.10.2012 and 30.10.2012. It is worth to note here that inquiry proceeding dated 22.10.2012, is not filed on record so as to show that the delinquent was present. It is further pertinent to note that copy of adjournment application seeking time by the delinquent on 22.10.2012 is also not available on record in the Enquiry Proceeding.

18] When Enquiry proceeding is conducted ex-parte against the delinquent, it is necessary to bring on record that the delinquent was given notice of hearing and the delinquent had knowledge of the proceeding which was going to take place on 22.10.2012. There is nothing on record to show that the deceased delinquent was present before Enquiry Officer on 22.10.2012. The record of proceeding dated 22.10.2012 is also not filed on record. If this fact is taken in to consideration, there is strong reason to say that deceased delinquent was not given notice of hearing of departmental proceeding.

19] It is also worth to note here that the enquiry proceeding filed on record does not reveals the copies of letters issued to the deceased delinquent at the instance of Reporting Officer to remain present on duty. Further, letters issued by Party No. 1 to the deceased delinquent time to time to produce medical report on record also do not find place in the enquiry proceeding. When it is alleged that despite repeated request deceased delinquent failed to undergo medical examination and to submit medical report on record, the Party No. 1 has to show the said facts producing those all letters on record.

20] After considering findings recorded by Enquiry Officer, it appears that only Reporting Officer has been examined. It is worth to note that one of the issues in question in the Departmental proceeding was, despite direction given delinquent failed to undergo medical examination and to submit report. Whether or not the delinquent attended medical examination as directed? This fact can very well be ascertained through the examination of Civil Surgeon or on the basis of any document or letter issued by Civil Surgeon disclosing the

fact that the delinquent did not undergo medical examination. No any such letter of Civil Surgein is on record to show that the delinquent did not attend medical examination. Further, Civil Surgeon is also not examined in the departmental proceeding. As such, there is no evidence in departmental enquiry to come to the conclusion that the delinquent did not undergo medical examination.

21] When show cause notice of dismissal came to be issued, the deceased delinquent appears to have filed reply dated 10.12.2012, which reveals that the deceased delinquent has submitted in his reply, that he was sent to Civil Surgeon and report to that effect was also submitted by him. It was also submitted by him that he has already filed leave application along with medical certificate.

22] The reporting officer has deposed in Enquiry proceeding that the deceased delinquent was on continuous leave for period of nine month. The reporting officer is Security Inspector under whom the delinquent was working as a security guard. On the basis of his deposition, it can be said that the delinquent was absent continuously. However, the delinquent had specifically stated in his reply to show cause notice that he had filed leave application along with medical certificate but there is nothing on record to show that such submission on part of the delinquent was false.

23] While considering the principle of natural justice, the opportunity of hearing is to be given to other side. In the present case on hand, I do not find reason to say that reasonable opportunity was given to the accused. There is also nothing on record to show that the deceased delinquent had knowledge about the hearing of the Departmental Proceeding listed on 22.10.12, 29.10.2012 and 30.10.2012. In the said facts and circumstances of the case, I am of opinion that the no principle of natural justice is followed while conducting enquiry against the delinquent. There is also no sufficient evidence on record to come to the conclusion that the deceased delinquent did not undergo medical examination

because, the said fact is not ascertained by making inquiry in that respect with District Medical Officer. In these facts and circumstances, I am of the opinion that the findings recorded by inquiry officer are perverse. Hence, I answer issue no.1 and 2 in the affirmative. Thus, I proceed to pass the following order.

ORDER

- 1) It is hereby declared that enquiry conducted against the complainant is not fair and proper and in accordance with the principles of natural justice.

- 2) It is hereby declared that the findings of the Enquiry Officer are perverse.

- 3) Party No.1 is directed to lead evidence.

(Shri. A. D. Tidke)

Judge

CHANDRAPUR.

Date :- 15.09.2025

Labour Court, Chandrapur.